IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A No. 3728 of 2007 (O&M)
Date of Decision : 16.11.2007

Gurmeet Kaur & Ors.

.....Appellants

Versus

Sarwan Singh & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.M.K. Garg, Advocate
for the appellants.

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VINOD K. SHARMA, J. (ORAL)

C.M. No. 10480-C of 2006

This is an application for condonation of delay of 459 days in refiling the appeal.

It has been averred in the application that the appeal was filed on 30.6.2006 and the same was returned by the office on 1.7.2006. However, the file of the same was tied with the admitted case file inadvertently and was found only on 2.11.2007 and, thus, there is delay of 459 days in refiling the appeal. In this regard affidavit of Clerk has been attached with the application.

For the reasons stated in the application, the delay of 459 days in refiling the appeal is condoned.

C.M. stands allowed.

R.S.A No. 1738 of 2005

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the

plaintiff appellants for declaration with a consequential relief for permanent injunction, has been ordered to be dismissed.

The plaintiff filed a suit for declaration to the effect that he is owner with possession of 1/7th share out of the suit property fully described in the head note of the plaint and the defendants are owners in possession to the extent of 6/7th share in equal share and the mutation No. 5929 showing defendants No.1 to 3 as owners in possession of the suit property, is null and void and the plaintiff further sought consequential relief for permanent injunction restraining the defendants from interfering in the lawful and peaceful possession of the plaintiff and from alienating the same or part thereof by any means to anybody. In the alternative, the plaintiff filed suit for joint possession of 1/7th share on the basis of inheritance from Karam Singh, his father.

The suit was contested, wherein a plea was taken that suit was not filed by a competent person. The plea of limitation was also raised. It was also claimed that the plaintiff is not entitled to claim any share in the property as the same stood transferred by way of civil court decree dated 6.10.1996 which had become final.

The learned Courts below on appreciation of evidence brought on record have recorded a concurrent finding of fact that the decree passed on 6.10.196 was not illegal or void as the plaintiff has failed to challenge the same on the basis of fraud or misrepresentation. It was also observed by the learned Courts below that plaintiff has failed to even summon the judgment and decree and the plaint filed in the suit to prove his allegations levelled against the passing of the decree. It was also proved on record that the property was not ancestral in the hands of Karam Singh and, therefore,

he had no right to alienate the suit property. Consequently, the learned trial court dismissed the suit filed by the plaintiff.

The appeal filed against the judgment and decree of the trial Court also failed.

The learned counsel for the appellants has vehemently contended that the learned Courts below were wrong in upholding the judgment and decree as the same was outcome of misrepresentation and fraud as the plaintiff proved on record the copy of the order passed by Assistant Collector Ist Grade, Tehsil Garhshankar, District Hoshiarpur showing that the mutation was sanctioned in favour of all the legal heirs and the said order was passed on 30.10.1987 i.e. after passing of the decree. The learned counsel for the appellants further contends that as the ex parte decree was produced in these proceedings, therefore, the learned Courts below should have drawn presumption of the same having been obtained by fraud. Once positive decree was placed on record, it was not open to the Court to consider the same to have been obtained by fraud and misrepresentation. The concurrent findings of fact recorded by the learned Courts below cannot be set aside on the basis of presumption as sought to be alleged in this appeal.

No ground is made out to interfere with the concurrent findings of fact recorded by the learned Courts below nor any question of law muchless substantial question of law arises for consideration in this appeal.

Dismissed in limine.

16.11.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**